



EMPLOYMENT TRIBUNALS

Claimant: Mr A S A Rashid

Respondent: The Sheffield College

HELD by CVP in Leeds **ON:** 11 August 2023

BEFORE: Employment Judge Wade
Members:

REPRESENTATION:

Claimant: In person

Respondent: Mr S Robinson, Solicitor

Note: A summary of these reasons was provided orally in an extempore Judgment delivered on 11 August 2023, which was sent to the parties on 14 August 2023. A request for the written reasons was received from the claimant on 23 August 2023. The reasons below, corrected for error and elegance of expression, are now provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the Judgment given on 11 August 2023 is also repeated below:

JUDGMENT

- 1 The claimant's trade union detriment complaint is struck out, there being no reasonable prospects of the claimant showing it was not reasonably practicable for the claim to have been presented in time.
- 2 The claimant's Equality Act complaints proceed to final hearing, his case on time limits being arguable, and not such that I could say he has little reasonable prospects of persuading a Tribunal to grant an extension of time, having heard all the evidence.

REASONS

Introduction

1. The matters before me today were set out by the Employment Judge on the last occasion at paragraph 4.1 and 4.2 of her case management summary. In essence, and I explained this at the beginning I am undertaking an assessment of the prospects of success of the claimant showing that the claims were presented within the relevant time limits.
2. Those claims are direct race discrimination, failure to make reasonable adjustments, harassment related to disability, and detriment for trade union activities. The factual basis concerns a lesson observation on 8 December 2021 and not upholding an appeal against the outcome of that observation, in January 2022. The claim form was presented on 13 January 2023 and the ACAS certificate records 2 November 2022 as the date of receipt and 14 December as the date of issue. Taking the end of January 2022 as the last act, the complaints are out of time by over eight months.
3. The time limits are to be found in section 147 of TULR(C)A - the Trade Union Labour Relations Consolidation Act 1992 and the other time limit is that in section 123 of the Equality Act. They are two different tests – Section 147 is one of reasonable practicability - it is a very clear question of whether it was reasonably doable for the trade union detriment claim to have been presented in time.
4. Today I had a hearing file of 179 pages and while I did not hear evidence about the substance of the claims, the claimant answered my questions about the background and presenting the claims. As I may permit the claims to proceed, I say as little as possible at this stage about the facts.

Background

5. At a final hearing the claimant will say he has been a trade union rep representing members at the respondent for around six years. His experience is that, in relation to classroom observations, sometimes grievances about those matters can be successful. He believed that his treatment concerning an observation was likely a mistake, and that it would be ironed out through that grievance process.
6. The claimant understood Tribunal time limits at the time, in short three months less a day, but he hoped and wished that this would be ironed out through a grievance process. The claimant was represented through a grievance in 2022 by his then trade union representative. Pursuing an internal grievance process was his reason for not presenting a complaint in relation to reasonable adjustments and trade union activities detriment at the time, or in time, even though the claimant had a sense, or a suspicion, that these matters could underlie the situation.
7. The grievance appeal outcome was not until November 2022 and the claimant commenced ACAS conciliation before the outcome was delivered. In that time

he has received subject access material which has given rise to a belief that race has played its part, as well as disability.

Conclusions

8. This background means that it is clear the trade union detriment complaint could have been presented within the respective time limit. The claimant suspected at the time, that his treatment concerning an observation was because of his trade union activities. There was nothing impracticable preventing its presentation. On the assumption that what would be said to a Tribunal is what has been said to me today, in broad terms, I think there is no prospect that a Tribunal would decide that it was not reasonably practicable to present the complaint in time. As a consequence of that judgment, the complaint is dismissed.
9. As far as the Equality Act complaints are concerned, the law and its application differs. As to the direct race discrimination and harassment complaints, I consider that the evidence which emerged after the subject access request in around September of 2022 goes potentially to both those matters. It is capable, in my judgment, of informing a decision about why this observation was conducted in the way that it was, at the time that it was, in the class that it was, and by the assessor that it was.
10. The particular language in those emails is capable of being the “something more” in addition to the difference in treatment between the comparator white British colleagues and the claimant. I can see that it is certainly arguable on the basis of that evidence.
11. There is clear prejudice in not being able to pursue a complaint that is arguable - I say no more than that. The complaints may or may not succeed, but because they are arguable, the prejudice to the claimant in not being permitted to pursue them is greater than the prejudice in being prevented from pursuing a complaint without any evidential basis for the something more.
12. I can therefore see clear prejudice to Mr Rashid in not being able to pursue those two Equality Act complaints. It is also right that losing a limitation defence is also prejudicial to the College, and the Tribunal typically weighs these matters up when deciding whether to grant an extension of time of around eight or ten months. I am not told of any other particular prejudice for the respondent, for example one of the potential witnesses having died, or not being available to give evidence through illness or anything of that kind.
13. For these reasons I cannot say that there is little prospects of success of a Tribunal granting an extension of time concerning the race related complaints, and I do not impose a deposit order in respect of limitation concerning those.
14. As far as the reasonable adjustments complaint is concerned, the assessment is more difficult. This was a matter which was understood by Mr Rashid at the time, and I understood he raised it at the time. Knowledge of the complaint, in an Equality Act exercise of discretion, is but one factor, to be weighed against the prejudice to the respondent. Furthermore, in some circumstances delays in an internal grievance process are also matters which a Tribunal will weigh in the mix. I cannot therefore say there would be little reasonable prospects of success in relation to limitation on the reasonable adjustments complaint either.
15. My conclusion is that the three Equality Act complaints can proceed to a final hearing and it will be for the Tribunal at that final hearing to decide limitation in

these matters. The remainder of my time is probably best spent making arrangements for that to happen, so that the parties are not delayed any further.

Employment Judge JM Wade

Date 29 September 2023

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